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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,984	01/13/2004	Garrett N. Ford	122142.00009	2249
57931	7590	09/26/2007	EXAMINER	
ANTONIO R. DURANDO			NGUYEN, SON T	
6902 N. TABLE MOUNTAIN ROAD			ART UNIT	
TUCSON, AZ 85718-1331			PAPER NUMBER	
			3643	
			MAIL DATE	DELIVERY MODE
			09/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/755,984

Applicant(s)

FORD, GARRETT N.

Examiner

Son T. Nguyen

Art Unit

3643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10/26/06 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See *Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 18-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Son T. Nguyen
Primary Examiner
AU 3643

Continuation of 3. NOTE: the added language would require further consideration/search. As required by 37 CFR 41.39(b)(1), any amendment or submission of affidavits or other evidence must be relevant to the new ground of rejection. Applicant's amended language does not appear to be relevant to the argument of elastic. Applicant added new subject matter that does not pertain to the elasticity factor. For example, Applicant changed the preamble from an article of footwear to a boot to overcome the Nor patent teaching of a sock. This clearly is not related to the elastic argument and appears to change things because no longer is the invention an article of footwear, which could range from a sock to a boot, from now more specifically a boot. Again, this has nothing to do with the new ground of rejection regarding elasticity in the band or strap. In addition, Applicant also amended the language to reflect a horse and not an animal, which again, has nothing to do with the elasticity argument. And finally, Applicant amended the claim to specifically defined where the band is to be located, i.e. connecting opposite edges of the rear tongue to the wall, which again, has nothing to do with the elasticity argument. All of the added language would definitely require further search and consideration, for they were not of issue relevant to the elasticity argument. Reopening after examiner's answer new ground of rejection has to reflect on the point of argument, i.e. elastic strap, and not just anything else that has nothing to do with elasticity. In any event, it is still deemed anticipated by Adam that his strap is somewhat elastic or flexible because if not, that would mean that a user can only use the boot with the strap once since once the strap is stretched around the hoof, it is permanently stretched and not flexible or elastic for repeated use? That does not make sense, especially in the shoe art. Furthermore, elastic is interchangeable with flexible as stated on dictionary.com. In conclusion, the added language would require further search/consideration, and the Examiner maintains that Adam still teaches a flexible or elastic band as stated in the final rejection and the examiner's answer.